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Attorneys for Plaintiff
SUN OPTICS, INC.

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF DELAWARE

SUN OPTICS, INC., a Utah Corporation,

Plaintiff,

v.

FGX INTERNATIONAL, INC., a Delaware
Corporation,

Defendant.

Civil Action No. _____

**DECLARATION OF BRUCE RAILE
IN SUPPORT OF PLAINTIFF'S
MOTION FOR A
PRELIMINARY INJUNCTION**

Filed March 7, 2007

Bruce Raile, declarant herein, declares as follows:

1. I am a citizen of the United States, am over the age of 21, and am competent to testify to the matters set forth herein.

2. I am the President, CEO, and co-founder of Sun Optics, Inc. ("Sun Optics"), Plaintiff in the above-captioned matter.

3. Sun Optics designs and sells innovative eye glasses, eye glass cases, and eye glass displays, which it combines into a complete merchandising program for reading glasses. Foster Grant also is a distributor of various products, including eye glasses and eye glass cases.

4. Sun Optics has invented and developed an innovative merchandising program that has proven very successful in the market place. This new merchandising program includes displaying the reading glasses in reading glass cases that are protected by the '427 and '180 patents. Products incorporating the designs of the '427 and '180 patents are referred as "Clear Tubes" because the clear upper portion of the reading glass case allows consumers to view the style of glasses without having to take the glasses out of the display. Sun Optics's used its Clear Tube merchandising program was to secure a contract to sell this program through the Rite Aid national chain of stores. This shelf space awarded to Sun Optics by Rite Aid was taken from Foster Grant.

5. In approximately late 2006, a few months after Rite Aid took shelf space from Foster Grant and awarded it to Sun Optics, Foster Grant launched a knock-off of Sun Optics's Clear Tube merchandising system. Foster Grant copied Sun Optics's patented reading glass case designs from the opaque bottom half to clear top half of the case, including the silver band in the middle and silver cap at the top. Foster Grant also copied the Sun Optics's displays, using displays with the identical number of glasses in each display, and an identical mix and arrangement of large and small reading glass cases. Last, Foster Grant copied at least five different styles of Sun Optics's reading glasses. In sum, Foster Grant has copied virtually every aspect of Sun Optics's reading glass merchandising system, including the reading glass case designs of the '427 and '180 patents.

6. In the reading glasses market, vendors of reading glasses typically obtain accounts with retail customers who carry the manufacturer's products and sell them to consumers. The normal course is for retail customers to enter into an exclusive contract with a vendor. These contracts, however, also typically include a provision that allows the retail customer to carry

certain products of different vendors if those products are not offered by the original vendor under the exclusive contract. Further, retailers who do not sign exclusive contracts with reading glasses vendors still typically carry the product of only one vendor because it is less hassle for the retailer to deal with one vendor as opposed to numerous vendors. Again, the exception to this practice is that retailers add the product of a second vendor if it cannot obtain the desired product from the first vendor.

7. Prior to Foster Grant's infringement of Sun Optics's patents, Sun Optics has been able to use its innovative reading glass case designs to obtain accounts with retailers that carry the product of another vendor because Sun Optics was the only vendor offering the innovative Clear Tube merchandising program. For example, Sun Optics was able to obtain a contract with the Rite Aid national chain of stores to carry Sun Optics's Clear Tube products, despite Rite Aid's prior contract to carry Foster Grant's product as explained above. Had Foster Grant been offering its infringing Clear Tube program at the time Sun Optics approached Rite Aid, it is very unlikely that Sun Optics would have been able to obtain an account and contract with Rite Aid. Since entering the Rite Aid stores, Rite Aid has taken additional shelf space from Foster Grant and given it to Sun Optics because Sun Optics's Clear Tubes out sold Foster Grant's reading glasses when marketed side-by-side in Rite Aid stores.

8. Before Foster Grant began copying Sun Optics's Clear Tube program, Sun Optics was able to market its innovative Clear Tube program as a program available exclusively from Sun Optics. The innovative nature of Sun Optics's Clear Tubes coupled with Sun Optics's as the exclusive source for the Clear Tubes enabled Sun Optics to obtain appointments to pitch its Clear Tube program to retailers, like Rite Aid, that were already carrying the product of another vendor. Since Foster Grant began marketing its copy-cat Clear Tube program, Sun Optics has been met with new resistance from some retail customers. Retailers no longer view Sun Optics as the exclusive source of Clear Tubes. Consequently, some retailers have refused even to give Sun Optics an appointment to pitch its Clear Tube program.

I have read the foregoing declaration and declare under penalties of perjury that the contents thereof are true and correct of my own personal knowledge.

Dated this 7th day of March, 2007.



BRUCE RAILE